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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,152	10/16/2001	Sau-Spence Leung	5855-03-BHJ	4192

7590 02/19/2002

Warnr-Lambert Company
201 Tabor Rd.
Morris Plains, NJ 07950

EXAMINER

WEDDINGTON, KEVIN E

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 02/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/978,152

Applicant(s)

Leung et al.

Examiner
Kevin E. Weddington

Art Unit
1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Oct 16, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 4 20) ☐ Other:

Art Unit: 1614

CLAIM 26 IS PRESENTED FOR EXAMINATION.

APPLICANTS' PRELIMINARY AMENDMENT FILED OCTOBER 16, 2001 HAS BEEN RECEIVED AND ENTERED.

PRIORITY

ACKNOWLEDGMENT IS MADE OF APPLICANT'S CLAIM FOR FOREIGN PRIORITY BASED ON PCT/USOO/O2O79. IT IS NOTED, HOWEVER, THAT APPLICANT HAS NOT FILED A CERTIFIED COPY OF THE APPLICATION AS REQUIRED BY 35 U.S.C. 119(B).

DOUBLE PATENTING

CLAIM 26 IS REJECTED UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING AS BEING UNPATENTABLE OVER CLAIM 1 OF U.S. PATENT No. 6,329,343. ALTHOUGH THE CONFLICTING CLAIMS ARE NOT IDENTICAL, THEY ARE NOT PATENTABLY DISTINCT FROM EACH OTHER BECAUSE THE PRESENT APPLICATION IS CLAIMING A COMPOSITION COMPRISING PULLULAN, AN ANTIMICROBIAL AGENT, PYRUVATE, AN ANTIOXIDANT AND A MIXTURE OF SATURATED AND UNSATURATED FATTY ACIDS; AND THE PATENT APPLICATION IS CLAIMING A COMPOSITION COMPRISING A FILM FORMING PHASE, PYRUVATE, AN ANTIOXIDANT, AND A MIXTURE OF SATURATED AND UNSATURATED FATTY ACIDS AND THE FILM FORMING PHASE COMPRISING PULLULAN.

Art Unit: 1614

CLEARLY, THE INSTANT COMPOSITION SET FORTH IN THE PRESENT APPLICATION IS CLAIMED
IN THE PATENT APPLICATION.

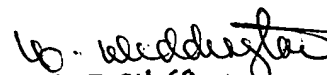
THE NONSTATUTORY DOUBLE PATENTING REJECTION IS BASED ON A JUDICIALLY
CREATED DOCTRINE GROUNDED IN PUBLIC POLICY (A POLICY REFLECTED IN THE STATUTE)
SO AS TO PREVENT THE UNJUSTIFIED OR IMPROPER TIMEWISE EXTENSION OF THE "RIGHT
TO EXCLUDE" GRANTED BY A PATENT AND TO PREVENT POSSIBLE HARASSMENT BY MULTIPLE
ASSIGNEES. SEE *IN RE GOODMAN*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.
Cir. 1993); *IN RE LONGI*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *IN RE*
VAN ORNUM, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *IN RE VOGEL*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); AND, *IN RE THORINGTON*, 418
F.2d 528, 163 USPQ 644 (CCPA 1969).

A TIMELY FILED TERMINAL DISCLAIMER IN COMPLIANCE WITH 37 CFR 1.321© MAY
BE USED TO OVERCOME AN ACTUAL OR PROVISIONAL REJECTION BASED ON A
NONSTATUTORY DOUBLE PATENTING GROUND PROVIDED THE CONFLICTING APPLICATION OR
PATENT IS SHOWN TO BE COMMONLY OWNED WITH THIS APPLICATION. SEE 37
CFR 1.130(b).

EFFECTIVE JANUARY 1, 1994, A REGISTERED ATTORNEY OR AGENT OF RECORD
MAY SIGN A TERMINAL DISCLAIMER. A TERMINAL DISCLAIMER SIGNED BY THE ASSIGNEE
MUST FULLY COMPLY WITH 37 CFR 3.73(b).

CLAIM 26 IS NOT ALLOWED.

ANY INQUIRY CONCERNING THIS COMMUNICATION OR EARLIER COMMUNICATIONS
FROM THE EXAMINER SHOULD BE DIRECTED TO EXAMINER K. WEDDINGTON WHOSE
TELEPHONE NUMBER IS (703) 308-1235.


Kevin E. Weddington
Primary Examiner
Art Unit 1614

K WEDDINGTON

FEBRUARY 12, 2002